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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 980

DEWEY HENRY WOMBLE,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI
and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The petition of Dewey Henry Womble respectfully shows:

STATEMENT OF CASE.

In an indictment filed on April 10, 1944, in the Northern Division of the United States District Court for the Northern District of California it was charged

that the petitioner did on or about the 10th day of July, 1943, at Louisville, in the State of Kentucky, knowingly, wilfully, unlawfully and feloniously transport, cause to be transported, and assist in transporting in interstate commerce, a woman, to-wit, one Dewel Kathleen Womble from Louisville, in the State of Kentucky, to the City of Stockton in the County of San Joaquin, within the Northern Division of the Northern District of California, and within the jurisdiction of said Court then and there being, by means of a certain automobile running over the public highways of the United States and the States of Kentucky and California; that said woman was so transported as aforesaid by said petitioner with intent and purpose on the part of said petitioner that said woman should practice prostitution and engage in other immoral practices, in violation of Title 18 U.S.C.A., Section 398.

To this indictment petitioner entered a plea of not guilty. The case was thereupon tried by the Court sitting without a jury and the Court pronounced its judgment finding petitioner guilty and sentencing him to confinement in a United States penitentiary for a period of five years. On June 16, 1944 petitioner filed his notice of appeal from said judgment to the United States Circuit Court of Appeals, for the Ninth Circuit on the three grounds: (1) That the evidence was wholly insufficient to justify the judgment of guilty; (2) that the Court committed error in rulings on questions of law relating to the introduction of evidence and in connection with the permitting of the reopening

of the case by the government after it had rested; and (3) that the Court erred in accepting and considering evidence purporting to show other immoral practices in view of the failure of the indictment to set forth separate counts charging this as ground for violation of said Title 18 U.S.C.A., Section 398. Petitioner thereafter and on July 15, 1944 filed his assignments of error and bill of exceptions, settled and allowed by the Court on July 22, 1944, respective briefs were filed and the appeal was argued and submitted on December 8, 1944. On the 22nd day of December, 1944 the Circuit Court of Appeals rendered its decision affirming the judgment of said District Court. Thereafter and on January 17, 1945 petitioner filed his petition for a rehearing before said Circuit Court of Appeals, which petition was on the 20th day of January, denied and an order made deleting from the opinion of December 22, 1944, certain of the language thereof.

STATEMENT OF FACTS.

The evidence discloses that in February, 1943 appellant and his daughter, Dewel Kathleen Womble, were living in Ludington, Michigan, where they operated a rooming house. Here they first met Stephen Elray Culp who for a time rented a room from them for a period of about three weeks. These three people left Ludington for Louisville, Kentucky where they rented an apartment where the daughter cooked and kept house while the two men Womble and Culp were

employed as boilermakers in the same plant. The men were not satisfied with their jobs so they quit and after a discussion decided to leave Louisville and go to St. Louis, Missouri for the purpose of obtaining work as boilermakers. Accompanied by the daughter, Dewel Kathleen Womble, they did go to East St. Louis and then to Wood River, Illinois to look over a job and feeling that they were not working long enough hours for them to make enough money they had a further discussion and decided to go to Salt Lake City to see about getting work on a big job going on at Provo, Utah. They went to the union headquarters in Salt Lake City and learned that they were laying off boilermakers at that time. The union officials told them there was a big job starting at Pasco, Washington, so after a discussion they decided to go there. On arrival at Pasco they found that they weren't far enough along with the job to be hiring boilermakers so they decided to go to San Francisco and work in the shipyards. In San Francisco they found the pay was not high enough for boilermakers so they went on to Stockton, where the day following their arrival Womble and Culp went to the union hall seeking employment as boilermakers. It appears that there was a registration of a Mr. and Mrs. John Robertson of Louisville, Kentucky at the Hotel Wolf, Stockton, California on July 8, 1943 and that this registration for a room at said hotel continued through July 12, 1943. The night clerk at this hotel identified Dewey Henry Womble and Dewel Kathleen Womble as persons he had seen entering and leaving this hotel, containing one hundred and

twenty rooms, for the days from July 8th to 12th. It is undisputed that Culp rented a room at the Traveler's Hotel in Stockton on July 8, 1943 which room was taken over by Dewey Henry Womble on July 10, 1943 when Culp left for Modesto, California. Dewel Kathleen Womble later obtained a separate room at this hotel where she and her father continued to live for some time. On August 6, 1943, Dewel Kathleen Womble was arrested at the New England Rooms in Stockton and was held in jail from August 6th to September 23, 1943. The police record indicated that she was charged with vagrancy based upon prostitution, but no trial was had and no determination of guilt or innocence was made. The only evidence of prostitution was the testimony of Domingo Tosani that in the month of July, 1943 he went to the New England Rooms on Main Street, Stockton, and had sexual relationship with Dewel Kathleen Womble at that place. He could not fix the date, but the complaint to the police was made on July 29, 1943, twenty-one days after the arrival of Womble, his daughter and Culp in Stockton.

Sally Mason testified that during the months of September, October, November and December, 1943, she operated a place of prostitution in Isleton, California; that in the first part of September, appellant came to her, told her his name was Ray and asked if she could use another girl and that she told him she couldn't use her right away. She said that this was the only time she saw or heard from the appellant but that about two or three days later Dewel Kathleen Womble

came to her place alone and went to work for her as a prostitute. That she came to work the first part or about the middle of September, 1943, and worked about two weeks and that it was still September when she left.

Tiny Avila testified that in September, October and November, 1943 she operated a house of prostitution in Isleton, California. That she first saw Dewel Kathleen Womble one night when she came to her place alone to seek a job. That she next saw her when she came to go to work at which time she was accompanied by a man whom the witness was unable to identify as the appellant. The witness testified the girl worked at her place two days but did not state the nature of the work. Added to this was evidence of certain telephone calls between points in Stockton, including the Traveler's Hotel, and the two houses of prostitution in Isleton some of which purported to be from the appellant.

BASIS FOR JURISDICTION TO REVIEW JUDGMENT.

This Court has jurisdiction to review the judgment of the United States District Court for the reason that the judgment is based upon a charge of violation of a federal statute, towit, Title 18 U. S. C. A., Section 398, a felony, and it is contended that the evidence introduced by the government is insufficient to justify said judgment. It is further contended that jurisdiction is conferred by reason of the fact that this case involves the right of a citizen of the United States to travel freely from one state thereof to another.

QUESTIONS PRESENTED.

1. Did the trial Court err in presuming that Dewey Henry Womble transported, caused to be transported or assisted in transporting Dewel Kathleen Womble from Kentucky to California merely because they made the trip together with another person, sharing nearly equally the expenses thereof?

2. Did the trial Court err in assuming the purpose of the trip or journey to have been for prostitution or other immoral purposes when the testimony of the government witness indicated the journey to have been made for a wholly different and innocent purpose?

3. Was the trial Court correct in presuming an immoral purpose of the trip or journey without any evidence of an immoral or even illegal purpose prior to the completion of the journey and without any evidence of previous immoral or illicit relations between the defendant and Dewel Kathleen Womble or any evidence of any previous connection of either the defendant or Dewel Kathleen Womble with prostitution?

4. Did the trial Court have the right to presume that the intent or purpose of the journey was shown by alleged activities of Dewel Kathleen Womble and Dewey Henry Womble a considerable time after their arrival at their destination?

5. Did the trial Court err in presuming that the mere registration by some person not shown to have been the defendant, at the Hotel Wolf in Stockton, California, on July 8, 1943 as Mr. and Mrs. John Robertson of Louisville, Kentucky, and the subsequent

entering and leaving of said hotel by defendant and Dewel Kathleen Womble constituted debauchery and indicated the purpose of the journey to have been for an immoral purpose?

6. Was the evidence introduced by the government sufficient to overcome the presumption of innocence of the defendant and prove him guilty beyond a reasonable doubt?

7. Was there any competent and substantial evidence fairly tending to support the verdict?

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

We seek a writ of certiorari for the reason that we believe a review of the record of this case in the Courts below will conclusively show that each of the questions set forth above must receive a negative answer. A full review by this Court will show that there is no evidence that Dewey Henry Womble transported, caused to be transported or assisted in transporting in interstate commerce, Dewel Kathleen Womble, for purposes of prostitution, other immoral purposes or at all; that the journey taken by Dewey Henry Womble was undertaken for a lawful and legitimate purpose and no law of the United States was violated by him.

Wherefore, petitioner prays this Honorable Court for its order directing a writ of certiorari to issue and that the judgment of the District Court of the United States for the Northern District of California, Northern Division, heretofore rendered herein, and the

judgment and orders subsequent thereto of the United States Circuit Court of Appeals for the Ninth Circuit be reviewed by this Court for the purpose of determining whether said judgments should be affirmed, reversed or modified.

Dated, Stockton, California,
February 16, 1945.

Respectfully submitted,
NATHANIAL A. BROWN,
Attorney for Petitioner.

HAROLD WYATT,
Of Counsel.

In the Supreme Court
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OCTOBER TERM, 1944

No.

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VERIFICATION OF PETITION.

State of California,
County of San Joaquin.—ss.

Harold Wyatt, being first duly sworn, deposes and says:

That he is one of the attorneys for Dewey Henry Womble, the within-named petitioner; that said Dewey Henry Womble is confined in the United States prison at Steilacoom, Washington and resides outside the county and state in which affiant has his office, to-wit the County of San Joaquin, State of California, and that affiant therefore makes this affidavit on his behalf;

that affiant has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to matters which are therein stated on information or belief, as to such matters he believes it to be true.

HAROLD WYATT.

Subscribed and sworn to before me this 16th day of February, 1945.

(Seal) FRANK G. WARREN,
Notary Public, in and for the County of San Joaquin, State of California.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

In this brief in support of our petition for a writ of certiorari we will deal separately with each of the numbered questions set forth in the petition itself and in the interest of brevity will not fully repeat the text of the question.

QUESTION 1.

The only testimony on this question came from the government witness, Stephen Elray Culp, who testified on this subject as follows:

Q. And what arrangements, if any, were made in respect to the transportation and the payment of the expenses and cost?

A. We all paid—they paid their share and I paid mine.

Well, now, did the defendant, Dewey Henry Womble, pay the expense of himself and Dewel Katheleen Womble?

A. Well, I don't know for that.

Q. Well, how did you arrange your meals and gasoline and various expenses of your trip?

A. Dewey generally paid for that.

Q. He paid for that?

A. Yes.

Q. And it was your automobile, is that correct?

A. Yes.

Q. And he would buy gasoline en route, meals and lodging, things of that nature?

Mr. Wyatt. I object to that as leading, if the Court please.

The Court. Yes, it is somewhat leading.

Cross-Examination.

Q. Now, on the matter of expenses of the journey, it is a fact, is it not, that upon leaving Louisville, that Kathleen Womble had a considerable sum of money of her own?

A. I didn't know.

Q. It is true, isn't it, that she paid you independently for her portion of the cost?

A. She did.

Q. She paid you independently, didn't she?

A. Yes.

Q. And when you would have meals along the way, isn't it a fact, that the three of you would pool your resources and pay for those meals?

A. That is right.

Q. Each one contributing his or her share, isn't that true?

A. That is right.

Redirect Examination.

Mr. O'Hara. Q. Now, Mr. Culp, this money you advanced, or loaned back in Ludington, Michigan, $500 of that you actually posted as a bail bond for Womble, who was in trouble with violation of some Michigan law back there, isn't that true?

A. That is right.

Q. And it was—some $500 of it at least was for that purpose and was given directly into the registry of the Court, wasn't it?

A. That is right.

Q. And anything over and above that, the balance, was result of small—an accumulation of small loans made to Womble from time to time, isn't that right?

Q. Now, on the trip out here and during the journey through these various places, and various states, it was Womble's promise to either give you some money to share the expenses or to pay it himself, isn't that right?

Mr. Wyatt. I object to that as leading and suggestive.

The Court. It is leading.

Mr. O'Hara. I am merely going into the matter on redirect that counsel went into on cross.

Q. At any rate, that was the arrangement that Womble would either give you the money or pay the bills himself?

Mr. Wyatt. Same objection, if the Court please, leading and suggestive.

The Court. You may ask him what the arrangement was.

Mr. O'Hara. Q. Well, the arrangement on the matter of trip expenses were shared between you and Womble, isn't that right?

Mr. Wyatt. Same objection, leading and suggestive.

Mr. O'Hara. Q. Well, were they?

A. As far as I know.

Recross Examination.

Mr. Wyatt. Q. Now, Mr. Culp, you have given us two different accounts of the manner in which the expenses of the trip were cared for. I believe you told me on cross-examination that Kathleen Womble gave you money independently to cover a portion of the cost of her transportation.

A. On some occasions she did; we all had our money together.

Q. I believe you also told me that the three of you pooled—each contributed his or her share and formed a pool for the expenses of the trip, is that right?

A. That is right.

Q. So that it is not the fact that the cost of transporting Kathleen Womble was covered by contributions from you and Dewey Womble only?

A. I don't think so; I don't know anything about the money proposition any more than we all paid our way through.

Q. Paid your own way?

A. We all went broke the same time.

Redirect Examination.

Mr. O'Hara. Q. Now, on this matter of expenses, Mr. Culp, just tell us exactly what happened. Did or did not Womble at times pay for things or give you money to pay for things, gas or oil or meals or lodging, whatever it might be en route? Did he or did he not at times give you some money or pay them himself?

A. Well, he usually done the paying. We never all each paid our own bills. We always paid as we went along.

Q. All right. Now, he had work in St. Louis, I think both of you worked there some place in East St. Louis, is that true, or was it Louisville?

A. Louisville.

Q. Well, he had made some money there and you had?

A. That is right.

Q. Now, you used up that money coming out to the Pacific Coast, didn't you?

A. That is right.

Q. And that was money you earned and money he earned, isn't that right?

A. That is right.

Q. And I think you mentioned to Mr. Wyatt that you all went broke together?

A. That is right.

Q. So what money you had, his earnings and your earnings at Louisville went into the expenses of this trip and you ended up without any money, any of you, is that about right, or very little money, at least?

A. That is right.

As we have said, this is the only testimony on the subject in question and no reading of it can do more than establish a joint venture on the part of all three of the travelers. The automobile used belonged to Culp and his testimony clearly indicates that they each contributed his or her part of the expenses. In fact the evidence of transportation is exactly the same against the government witness as it is against the defendant. Transportation is an essential element of this offense and unless defendant's participation therein is established beyond a reasonable doubt a conviction is erroneous. Aiding in transportation as used in the statute does not mean the spending of a slightly larger sum in the payment of traveling expenses than others participating in a joint venture, but rather it means being a party to a conspiracy which results in the providing of such transportation.

QUESTION 2.

The most essential element of this crime, without which there can be no federal offense is the unlawful purpose or intent of the journey. There is utterly no evidence of unlawful purpose or intent of the journey.

There is utterly no evidence of unlawful intent or purpose on the part of defendant prior to his arrival at his destination and the trial court can only have supplied this vital deficiency by recourse to suspicion, conjecture and unreasonable inferences. Had the only evidence been the testimony of the defendant or the alleged victim we could understand its rejection and an acceptance of inference in its place, but here the only evidence on this subject came from the lips of the government's star witness, Stephen Culp, and the Court had no right to reject and disregard his testimony because of mere caprice, whim or fancy, but, in the absence of rebuttal was obliged to accept his testimony on the subject as true. That testimony is as follows:

ARGUMENT.

In connection with this assignment of error we have set forth in detail all of the testimony of Stephen Elray Culp, the only witness on this question and no reading of the testimony would do more than establish a joint venture on the part of all three of the travelers.

The automobile used belonged to Culp and his testimony indicates clearly that they each contributed his or her part of the expenses. In fact the evidence of transportation is exactly the same against the government witness as it is against the defendant.

ASSIGNMENT OF ERROR NO. 3.

The Court erred in assuming the purpose of the trip or journey to have been for prostitution or other immoral purposes from the mere fact that the defendant and Dewel Kathleen Womble journeyed together from one state to another particularly in view of the evidence of the United States witness, Stephen Elray Culp, the only witness on this subject who testified as follows:

Q. Now, did you leave Louisville with these two people, the defendant and Miss Womble?

A. Yes, sir.

Q. And where did you travel to?

A. St. Louis, Missouri.

Q. Now, was your travel more or less continuous until you reached the Pacific Coast, or did you stop off at places?

A. We stopped.

Q. You went to St. Louis, and from there where did you go?

A. Salt Lake City.

Q. And from Salt Lake City, where?

A. Walla Walla, Washington.

Q. And from there you proceeded on where?

A. San Francisco.

Q. And from San Francisco to where?

A. Stockton.

Q. All right. Now, this journey that you have just related, these various places, there were present on the journey yourself, Dewey Womble, the defendant, and Dewel Kathleen Womble, is that correct?

A. That is right.

Cross-Examination.

Mr. Wyatt. Q. Mr. Culp, you first met the defendant and his daughter in Michigan?

A. Ludington.

Q. Ludington, and you rented a room from Mr. Womble at that place, did you?

A. Yes, sir.

Q. You were employed in that city, at that time, were you?

A. That is right.

Q. And Mr. Womble was apparently operating a rooming house, is that correct?

A. Yes.

Q. And how long did you rent a room from him before the three of you journeyed on to Kentucky?

A. Oh, probably three months.

Q. And it was then decided among the three of you to go to Kentucky. Did you agree upon a destination first?

A. Yes.

Q. Then you went to Louisville, Kentucky?

A. That is right.

Q. And in Louisville did the three of you live together?

A. We had an apartment.

Q. The three of you occupied an apartment, is that correct?

A. Yes.

Q. Were you employed while you were in Louisville?

A. Yes, sir.

Q. What was the nature of your employment?

A. Boilermaker.

Q. Was Dewey Womble employed in Kentucky?

A. That is right.

Q. In the same employment, boilermaker?

A. That is right.

Q. Were you a member of the Union, the Boilermaker's Union, at that time?

A. That is right.

Q. And you held a card?

A. That is right.

Q. And do you know whether or not Dewey Womble was a member and holder of a card at that time?

A. He was.

Q. Did you both work in the same plant?

A. Yes.

Q. Who kept house for you and prepared the meals?

A. His daughter.

Q. What were the circumstances surrounding the decision to leave Louisville and go elsewhere?

A. Well, we weren't satisfied with the job.

Q. And you both quit your job there did you?

A. Yes, we did.

Q. And did you have a discussion as to what your future plan would be?

A. Yes, we did.

Q. And who was involved in that discussion?

A. Dewey and myself.

Q. Just the two of you?

A. Yes.

Q. And what did you decide?

A. To go to St. Louis.

Q. For what purpose?

A. For boilermaker.

Q. For work?

A. For work.

Q. As boilermakers?

A. Yes.

Q. And was there any discussion relative to his daughter accompanying you?

A. Not exactly. How do you mean?

Q. I mean was her name mentioned, was it decided—did you decide between you that she would go along also?

A. Yes.

Q. So that she did accompany you to St. Louis?

A. That is right.

Q. And you had discussed the matter with the defendant before leaving Louisville, and your purpose, the announced purpose of going to St. Louis was to obtain other employment as boilermakers?

A. That is right.

Q. And it is East St. Louis, that is where you went?

A. That is right.

Q. And you did go to East St. Louis?

A. That is right.

Q. And when you got there what did you do?

A. We went out and looked the job over and we thought there wasn't working hours enough so we

could make good enough, so we decided to go to Salt Lake City.

Q. The job you looked over was at Wood River, Illinois, was it?

A. That is right.

Q. And did you call at the Union in East St. Louis?

A. That is right.

Q. And the defendant, Womble, did also?

A. That is right.

Q. And you both went out to the job at Wood River?

A. That is right.

Q. And you felt the working conditions were not what you wanted?

A. That is right.

Q. And then you had a discussion?

The Court. Is this material?

Mr. Wyatt. Yes, sir, your Honor, I believe it is.

The Court. In what respect?

Mr. Wyatt. I believe the very foundation of a charge of this kind is the purpose and intent of the journey and the intent on the part of the defendant to carry any person under the White Slave Act, to transport her for immoral purposes must have been formed before the commencement of such transportation or at some point en route and before entry into the state of final destination, and I am pointing out that the intent on leaving Louisville, the purpose of the trip, was to find employment. Upon going to East St. Louis

and upon leaving there, I am going to see what their intent was.

The Court. Proceed.

Mr. Wyatt. Q. Did you have a discussion on your plans on leaving East St. Louis?

A. Yes, sir.

Q. And what was your conclusion?

A. To go to Salt Lake City.

Q. For what purpose?

A. There was a big job going on there at Provo.

Q. Provo, Utah?

A. Yes.

Q. And did you go to Salt Lake and Provo?

A. Yes, we did.

Q. And did you go—did you make your inquiries regarding a job at Salt Lake and Provo?

A. Yes.

Q. Did you go to the Union headquarters for that purpose?

A. Yes, we had to go to Salt Lake City, through the Union.

Q. And what situation did you find there with respect to jobs?

A. They were laying off boilermakers at that time.

Q. Did you get any information which caused you to go to any other place for work?

A. We did.

Q. And what was that?

A. They told us there was a job starting at Walla Walla, Washington.

Q. Is that Pasco you have in mind?

A. Or Pasco.

Q. And then did you discuss the matter of going to Pasco with the defendant?

A. That is right, I did.

Q. And did you go to Pasco, Washington?

A. Yes.

Q. And what were the conditions there?

A. Well, they weren't far enough along with job; they weren't hiring boilermakers yet.

Q. And then did you have some further discussion as to destination?

A. Yes, we did.

Q. And what was the result of that, what did you decide upon?

A. We decided to go to San Francisco and work in the shipyard.

Q. And did you go to San Francisco?

A. Yes, we did.

Q. And did you make inquiries regarding jobs in San Francisco or did you go to Stockton without doing that?

A. We looked up the jobs there and they weren't paying enough for boilermakers.

Q. And then you decided to go to Stockton?

A. That is right.

Q. Now, then before you left Louisville was there ever any discussion either between you and the defendant or between the defendant and his daughter regarding any purpose in taking her along on this trip?

A. There was not.

Q. You didn't hear any?

A. No.

Q. You didn't hear anything suggested by the defendant that he was to place her in a house of prostitution?

A. I did not.

Q. Anywhere en route on that trip did you hear any such discussion?

A. No.

Q. Did you ever hear or observe anything that would indicate that the purpose of the trip was anything other than to find employment?

A. No.

Q. Now, how long did you stay in Stockton?

A. I was there one night, I think, and part of a day.

Q. And part of a day? Did you make inquiries regarding boilermaker work in Stockton?

A. I did.

Q. And you went to the Union Hall in Stockton for that purpose?

A. That is right.

Q. You were accompanied there by the defendant, Dewey Womble?

A. That is right.

Q. In other words, when you arrived in Stockton you both went to the Union Hall and sought employment?

A. That is right.

Q. What was the situation in respect to employment in your particular trade at that time?

A. I didn't get that.

Q. Well, was there work available in your trade?

A. Yes.

Q. She did. Just a moment, please. Just in conclusion, you never at any time heard Dewey Womble assert that the purpose of his trip from Kentucky to California was for any purpose other than employment, did you?

A. That is right.

Mr. Wyatt. That is all.

Q. And who made the arrangements, or rather, who suggested the trip out to the Coast here, to East St. Louis, Denver, and so on?

Mr. Wyatt. Mr. O'Hara, if the Court please, is this again direct?

A. Well, we kind of talked it over. I had a son in San Francisco that I was kind of anxious to see and as long as I was looking for work we naturally headed this way.

Mr. O'Hara. That is all.

QUESTION 3.

There is nothing in the record to indicate any immoral or illicit relations between the defendants prior to the commencement of the journey in question nor was there any evidence to indicate that either had ever previously engaged in or been connected with prostitution. The existence of such prior immoral or illicit relationship or connection with prostitution is one of the circumstances which must exist before an

unlawful purpose can properly be inferred from all the circumstances.

> "The statute makes the intent and purpose an element of the crime, and, if the journey was planned with no immoral purpose, at the time, no crime was committed no matter what may have occurred thereafter."
>
> *United States v. Grace*, 73 F. (2d) 294, 295.

> "The intent and purpose is a fact and must be established by the proof to the satisfaction of the jury beyond a reasonable doubt; and being an element of the offense itself its existence or non-existence must be determined by the jury and not by the court. It may be inferred from circumstances, but an immoral purpose first conceived at the end of the journey is not sufficient."
>
> *Drossos v. U. S.*, 16 F. (2d) 833, 834.

In *Alpert v. U. S.*, 12 F. (2d) 352, the Court said:

> "The only evidence of what took place at the hotel in Pottsville was that given by the young woman, and whether or not the plaintiff in error intended to indulge in sexual relations before leaving the State of New York is left entirely to inference. There is no evidence of any arrangement between the couple or understanding between them for illicit intercourse after going to Pennsylvania. The fact that a journey from one state to another is followed by such intercourse, where the journey was not for that purpose, but wholly for other reasons, cannot be regarded as a violation of that act. United States v. Fisher (C.C. A.), 266 F. 270. To justify conviction, there should be convincing evidence of the intention to

transport the woman for immoral purposes, and that it was formed before the woman reached the state to which she was being transported. If the intention referred to did not exist before the woman reached the state to which she was being transported, but was formed after reaching the state in which the illicit relationship is had, conviction under the act cannot be had. Sloan v. United States (C.C.A.), 287 F. 91."

Indicative of how far the Courts have gone in holding that the immoral intent must have been formed before the commencement of the journey is the language used in *Biggerstaff v. U. S.*, 260 F. 296, where it said:

"A violation of this act requires that the transportation in interstate commerce shall be for an immoral purpose, and the mere commission of an immoral act by defendant while on an interstate journey with a woman for a lawful purpose does not, where the immorality was merely casual, constitute a violation of the act."

And again in *Fisher v. U. S.*, 266 F. 667, which held:

"The interstate transportation denounced by the act must have for its object, or be a means of effecting, or at least of facilitating, the sexual intercourse of the parties. But the mere fact that a journey from one state to another is followed by such intercourse when the journey was not for that purpose, but wholly for other reasons, to which intercourse was not related, cannot be regarded as a violation of the statute."

In the case of *Johnson v. U. S.*, 215 F. 679, the Court in requiring prior formation of intent or purpose went so far as to even hold:

> "A purpose to transport a woman for purposes of prostitution cannot be found from the fact that several days after her arrival at her destination the one who furnished the transportation supplied her with money with which to open a brothel."

In support of this holding the Court said:

> "* * * The only fact is that several days after the girl's arrival in Chicago defendant supplied the money to enable her to open and conduct a brothel. This fact might lead to a suspicion that defendant when providing transportation had the intent to aid her subsequently in her profession. But criminal convictions cannot be allowed to rest on suspicion and there were no supplementary facts like those that support the sexual intercourse counts,—no proof that defendant had ever been connected with or interested in brothels, or prior to the act in Chicago he had ever aided this or any other girl to engage in prostitution."

QUESTION 4.

As was said in *Mortenson v. U. S.*, 64 Supreme Court Reporter 1037 at 1041:

> "People not of good moral character, like others, travel from place to place and change their residence. But to say that because they indulge in illegal or immoral acts, they travel for that purpose, is to emphasize that which is incidental and ignore what is of primary significance."

And again in *Mortenson v. U. S.*, supra, at page 1040, the Court stated:

> "An intention that the women or girls shall engage in the conduct outlawed by Section 2 must be found to exist before the conclusion of the interstate journey and must be the dominant motive of such interstate movement. Without that necessary intention and motivation, immoral conduct during or following the journey is insufficient to subject the transporter to the penalties of the act."

In short, if as appears to be the fact the journey of Dewey Henry Womble and Dewel Kathleen Womble was both begun and completed for a perfectly innocent purpose and after arrival at the place of destination the victim changed her mind and embarked upon an immoral course of conduct either with or without the knowledge or assistance of defendant, the statute was not violated and no federal offense committed.

QUESTION 5.

Surely we concede that the trial Court is the trier of the facts and as such is permitted to resolve conflicts, but we contend that there was no evidence whatever of wrongdoing on the part of this defendant at all in connection with the Wolf Hotel and that if the trial Court based its judgment in part or entirely on this evidence, it was guilty of error. The Court had no right to determine that because someone registered as Mr. and Mrs. John Robertson of Louisville, Ken-

tucky, that this was done by the defendant in the absence of testimony that would support this conclusion. The handwriting was there and yet no attempt was made to identify it as appellant's handwriting although records bearing his signature in registering at the Traveler's Hotel were in the government's hands at all times and actually in Court during the trial. Neither did the clerk who was on duty and supervised the registration identify the defendant as the person who registered for the room and we may safely assume such identification would have been made if the facts had made it possible.

The truth of the matter is that the defendant and Culp went to the Traveler's Hotel where they obtained a room for which Culp registered on July 8th, and for which Womble registered on July 10th when Culp left to go on to Modesto.

QUESTIONS 6 AND 7.

A discussion of these two points would necessarily involve a restatement of the arguments heretofore presented. Verbosity is to be avoided so we shall not comment further at this time. We hope that we may have the opportunity to do so later.

CONCLUSION.

Our familiarity with this case from its inception and our long and careful study of the record convinces us that there was a complete lack of evidence from which the trial Court could properly find or infer, beyond a reasonable doubt, that petitioner transported Dewel Kathleen Womble in interstate commerce "for the purpose of prostitution or debauchery" within the meaning of the Mann Act. Indeed we contend the evidence affirmatively establishes the fact to be that the journey was for the legal, legitimate and laudable purpose of finding suitable employment in war work as testified to by the government's own witness.

We respectfully pray for the granting of a writ of review directed to the United States Circuit Court of Appeals for the Ninth Circuit, and if our efforts in connection with this petition have appeared to lack finesse and to be too lengthy, it is because of the writer's unfamiliarity with Supreme Court practice and a lack of understanding of the sources of the Court's knowledge of the facts except as disclosed by the petition and supporting brief.

Dated, Stockton, California,
February 16, 1945.

Respectfully submitted,
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